

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

Chamber Ref: FTS/HPC/PR/26/0963

Re: Property at Holystone, 37 Urquhart Road, Oldmeldrum, AB51 0EX (“the Property”)

Parties:

Miss Stephan Dunn, Holystone, 37 Urquhart Road, Oldmeldrum, AB51 0EX (“the Applicant”)

Mrs Aileen Morrison, Doneen Cottage, Sought Blackbog, Oldmeldrum (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent did not comply with any duty in terms of regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and determined that the Respondent should pay to the Applicant the sum of £350.

Background

2. This was an application in terms of rule 103 and regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, (‘the regulations’). The applicant attended and was represented by Ms Jacqueline Whyte Solicitor. The respondent attended.

Preliminary matters

3. The tribunal confirmed with both parties that they had each received the others' recent submissions. The tribunal noted that there was a considerable amount of documentation lodged by each party with allegation and counter allegation about the behaviour of each and about the condition of the property. The legal member explained that the only matter before the tribunal was the application for a penalty in relation to the tenancy deposit. It was open to each party to make separate applications in accordance with the tribunal rules in relation to the other matters each had raised.

Matters agreed

4. It was agreed that the tenancy started on 1 May 2022. The applicant paid a deposit of £700. This was not lodged in an approved scheme until 23 February 2026. The tenancy came to an end on 20 July 2026 and thereafter the deposit was returned to the applicant in full.

The Applicant's position

5. The applicant sought advice from Citizen's Advice Bureaux (CAB) regarding her tenancy and they advised her that the deposit she paid at the start of the tenancy should have been lodged in an approved scheme. They wrote to the respondent raising various matters including the deposit, and as a result of the letter the deposit was lodged on 23 February 2026, some four years later. The applicant gave the respondent notice on 9 July 2026 and she left the property on 20 July 2026. The deposit was returned in full. The applicant is seeking a penalty in relation to the respondent's failure to lodge the deposit for most of the tenancy. The deposit was returned in full due to the forthcoming CMD and the respondent did not seek to recover any of the deposit.

The Respondent's Position

6. The respondent became an accidental landlord in 2017 due to difficulties in trying to sell the property. The first two tenants were known to the respondent and she did not take a deposit. It did not occur to the respondent to take a deposit from the applicant either. It was the applicant who raised this with the respondent, and it was agreed that a deposit of £700 would be paid. The respondent was unaware of her obligations as landlord to lodge a deposit in an approved scheme within 30 working days of the start of the tenancy. It was only when she received the letter from the CAB that she realised this. She lodged the deposit immediately. There were issues with the tenancy however at the point the deposit was lodged the respondent expected the tenancy to continue. The applicant told the respondent on 9 July 2026 that she was moving out and the applicant moved out on 20 July 2026. For some unknown reason, the deposit was returned by the deposit scheme to the applicant in full without giving the respondent the opportunity to make a claim in relation to the condition of the

property. The respondent intends to use a letting agent to manage the property for future tenants as she feels out of her depth.

5. Findings in fact

- The respondent is the owner and registered landlord of the property.
- The parties entered into a private residential tenancy agreement for let of the property on 1 May 2022.
- The agreed rent was £700.
- The applicant paid a deposit of £700.
- The deposit was not lodged with an approved scheme within 30 days of the start date of the tenancy.
- The applicant was not provided with confirmation of the amount of the deposit or the date it was received by the landlord.
- The deposit was not lodged with an approved scheme until 23 February 2026.
- The respondent only became aware of her legal obligation to do so when she received a letter from a representative of the applicant.
- This is the only property the respondent lets out and this is the first time the respondent has taken a tenancy deposit.

Reasons

6. Regulation 10 of the 2011 Regulations states that if satisfied that the landlord did not comply with the duty in Regulation 3 to pay a deposit to the scheme administrator of an approved scheme within 30 working days of the beginning of the tenancy, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit. This was a clear breach of the regulations. The Respondent did not lodge the deposit within 30 days of the start of the tenancy, or comply with any of the duties set out in regulation 42 such as provide the applicant with the scheme details and confirm how much money was lodged.

7. Once it was established that a breach of the regulations had occurred, the tribunal then considered the gravity of the breach. The amount to be awarded is a matter for the discretion of the tribunal having regard the facts before it. The tribunal considered the recent case law. In *Rollett v Mackie* UTS/AP/19/0020 at para 13 and 14 Sheriff Ross considered the assessment of the level of penalty and said: "[13] In assessing the level of a penalty charge, the question is one of culpability, and the level of penalty requires to reflect the level of culpability. Examining the FtT's discussion of the facts, the first two features (purpose of Regulations; deprivation of protection) are present in every such case. The question is one of degree, and these two points cannot help on that question. The admission of failure tends to lessen fault: a denial would increase culpability. The diagnosis of cancer also tends to lessen culpability, as it affects intention. the finding that the breach was not intentional is therefore rational on the facts and tends to lessen culpability. [14] Cases at the most serious end of the scale might involve: repeated breaches against a number of tenants; fraudulent intention; deliberate or reckless failure to observe responsibilities; denial of fault; very high

financial sums involved; actual losses caused to the tenant, or other hypotheticals. None of these aggravating factors is present." In the case of Kirk-v- Singh B22/15 Sheriff Jamieson having reviewed the recent case law said the sanction should be 'fair, proportionate and just having regard to the seriousness of the non compliance'".

8. This deposit was unprotected for most of the tenancy. Not only was the deposit lodged almost four years late, the other duties set out in the regulations were not complied with. There were however some mitigating factors. The respondent is not an experienced landlord and this is the first time she has taken a tenancy deposit. The respondent was unaware of her obligations and as soon as she became aware the deposit was lodged. The breach was not wilful and the deposit was returned to the applicant at the end of the tenancy. The tribunal decided that the breach was at the lower end of the scale. The tribunal decided that a penalty of half of the deposit, namely £350 was fair proportionate and just in all of the circumstances.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Lesley A Ward

2 September 2026

Legal Member/Chair

Date